Supreme Court, U.S.
FILED

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

Sandra Freeman and Eugene Freeman
petitioners

vs.

Dr. Lenard R. Simon , MD and Beth Israel Hospital Corporation
respondent

Petition for Writ of Certiorari to the Supreme Judicial Court of Massachusetts

PETITION FOR WRIT OF CERTIORARI

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3184

QUESTION PRESENTED

1] WHETHER FEDERAL CONSTITUTION GRANTS UNITED STATES CITIZENS THE RIGHT TO BE FREE FROM THE PAIN AND SUFFERING, DEPRIVES NATURALIZED FEDERAL CITIZENS FROM THE FIRST AND FOURTEENTH AMENDMENTS PROTECTION.

2] THE DENIAL OF THE MASSACHUSETTS SUPREME JUDICIAL COURT TO RECOGNIZE PLAINTIFF'S RIGHTS IS ABSOLUTELY CLEARLY ERRONEOUS: THE STATE COURT DISREGARDED THE PLAINTIFF'S SUBSTANTIVE PROTECTED LIBERTY INTEREST TO BE FREE FROM THE PAIN AND SUFFERING AND CONCRETE PALPABLE, IRREPARABLE DAMAGES TO THE VITAL, FUNDAMENTAL, INDIVIDUAL, PERSONAL INTRAFAMILIAL PRIVACY RIGHT ABSOLUTELY CLEARLY ESTABLISHED BY THE CONSTITUTION AND FEDERALLY PROTECTED UNDER THE FIRST AND FOURTEENTH AMENDMENTS AT THE TIME OF INTRUSION BY THE GROUP OF PRIVATE DEFENDANTS UNDER THE EXPLICIT AUTHORIZATION OF THE STATE'S LAWS.

LIST OF ALL PARTIES

The plaintiffs, Sandra Freeman and Eugene Freeman are the REAL PARTY in the State District Court, in the Appeals Court, in the Supreme Judicial Court and in the United States Supreme Court.. The private Defendants, Dr. Lenard R. Simon, MD and Beth Israel Hospital Corporation in this unresolved blood-and-flesh controversy are REAL PARTY and are the Persons for the purpose to sue and to be sued.

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OPINIONS BELOW

Timely filed Leave to Obtain Further appellate Review was denied .

JURISDICTION

This Honorable Court has the jurisdiction over this controversy under 28 U.S.C.A. §2101.

STATEMENT OF THE CASE

The plaintiff, Sandra Freeman, Russian born, Russian speaking, Slavic origin female is the naturalized citizen of the United States. The plaintiff, Eugene Freeman is independent international artist and poet.

The unresolved live, blood-and-flesh controversy under Article III still exists between real parties: Freeman's party and the Respondents, namely Dr. Lenard R. Simon, MD and Beth Israel Hospital Corporation regarding the intentional constitutional deprivations deliberately, with the personal knowledge inflicted upon the plaintiff. The intentional damages done deliberately and with the personal knowledge to the desperate plaintiff justifies the vindication of inflicted malice, including the compensation for irreparable harm.
Submitting the plaintiff to illegal unconsented manipulations and castration, resulted as the irreparable damages to Sandra Freeman sexual sphere, the Defendants disregarded equal protection absolutely clearly established at the time of deprivation under XIV Amendment, damaging specific, concrete, fundamental, personal constitutionally established and federally protected First and Fourteenth Amendments intrafamilial privacy rights. At the time of committing civil rights deprivations, the Defendant, Dr. Lenard R. Simon, MD was a Director of Gynecological Oncology in Beth Israel Hospital, the teaching hospital of the Harvard Medical School.

The deprivations of the plaintiff's constitutional rights was done by the group of the agents and servants of Beth Israel Hospital, the Defendant. At the time of malicious and conspiratorial deprivations, the group of Defendants pretent to act as a health care professionals, with the personal knowledge, within their individual and business capacity in tandem scheme, under the judicial support and authorization of Massachusetts

General Law Annotated. At the time of deprivation all of the Defendants aware of the irreparable damages inflicted by their premeditated wrongs would irreparably harm the plaintiff life, but proceeded further to achieve the goal of planned research and illegal castration.

These facts of deprivations absolutely clearly established by the plaintiff's pleaded and persuaded prima faciae by the best evidence, immediate, direct and material to the sustained constitutional damages.

Absolutely crystal clearly established at the time of deprivation fundamental rights in this live unresolved controversy justified to be vindicated under the Section 1 of the Civil Rights Act of 1871, namely 42 USC § 1983 and § 1985(3), pursuant to 28 USCA § 1343 (3).

All previous obstruction of justice in the Court of Law is oppressive, immaterial, irrelevant and illegal to the vindication of irreparable constitutional damages, including explicit misconduct of the First Circuit Chief Justice Stephen Breyer, presiding over the plaintiffs controversy being at same time the professor of the Harvard Law School.

GROUNDS AND REASONS FOR OBTAINING WRIT

1} FEDERAL CONSTITUTION GRANTS ALL UNITED STATES CITIZENS THE RIGHT TO BE FREE FROM PAIN AND SUFFERING.

2} THE PETITIONERS SANDRA AND EUGENE FREEMAN PRAY THIS HONORABLE COURT TO EXERCISE ITS AUTHORITY OF APPELLATE JURISDICTION IN ORDER TO INVALIDATE AND TO REVERSE THE INTENTIONAL DENIAL BY THE HIGHEST STATE COURT TO RECOGNIZE SANDRA FREEMAN SPECIFIC, CONCRETE, FUNDAMENTAL, PERSONAL AND ESSENTIAL SUBSTANTIVE RIGHTS OF PERSONHOOD, AUTONOMY AND BODILY INTEGRITY, CONSTITUTIONALLY ESTABLISHED AND FEDERALLY PROTECTED AT THE TIME OF DEPRIVATION, INCLUDING INTRAFAMILIAL PRIVACY RIGHTS OF VIOLATED EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT. This right was denied by the highest Court of the State. The Court upheld the group of the Defendants, inflicted plaintiff's irreparable damages to the constitutional rights. [App. 2]

The Court disregarded the best evidence, and ignored the fact that plaintiff litigate blood-and-flesh controversy of unresolved individual autonomy and self-determination issues, vital to the existence of fundamental personal liberty and freedom under the First and Fourteenth Amendments.

Denying these constitutionally established and federally protected at the time of committed wrongs right to the injured plaintiff's family, the Court upheld hypothetical, abstract and speculative believes and offensive interests of the Defendants.

The Defendants' race and origin was not questioned under disruptive concept of religious supremacy and antagonistic dominance. The Defendant was not the object to discriminative treatment and research manipulation as plaintiff, mutilated by the denial of the fundamental interest to be free from the pain and suffering and to be let alone. The Court absolutely wrongly disregarded live constitutional controversy, resulting in the deep, bleeding cut inside plaintiff's familial privacy. The Court give the Defendants freedom to inflict the damages over the plaintiff again, and again without any formalized articulation to justify antihuman violation of the plaintiff's rights. The Massachusetts Supreme Judicial Court misunderstand the context of these plaintiffs damages, treating us as if "property" or "thing", challenging of Freeman's Slavic origin. The State's absolutely clearly ignored that the plaintiffs Sandra Freeman, sustained concrete and palpable damages to her First and XIV Amendments rights. As to the contrary the Constitution promised the protection of just and equal law under the federal laws.

These damages, particularized and specifically established, pleaded, listed, recorded and introduced with the personal knowledge by Affidavit as the irreparable damages to the vital, unseparable from the Freeman vital, fundamental rights still fallaciously denied without compensation.

The irreparable damages resulted as an authorization by the set of Massachusetts laws effectuated by the immediate impact with the Defendants. As it follows:

1] the intolerable prolonged consiencial, excruciated pain and suffering; and

2] the fear of the death;

3] explicit knowledge of own injury

4] impairment of the plaintiff's state of mind;

5] a shortened life expectancy;

6] inability to engage in traditional sexual relations;

7] humiliation;

9] brutal invasion in the sanctity and privacy of intrafamilial marital affairs

10] lost of enjoyment of sexual intrafamilial relationship; bodily mutilation, including the sexual sphere, [App. 2, 3, 13, 14]

These conditions degraded the plaintiff's family below the level of the laboratory animal. The Defendants and the State Court expressly acted as instrument of military policy, harming unpopular ethnic Russians, submitting Sandra Freeman under the State's law authorization to the concealed research manipulation and ILLEGAL castration without the proper medical treatment.. The Court denied the constitutionally protected privacy of the plaintiffs' family, marriage, motherhood, procreation protected in the doctors office and hospital, as otherwise required to safeguard the right of intimacy involved.

The Court either did not read the evidence before them, or chose to disregard it. The right is denied when the rulings of the State Supreme Judicial Court totally disregards the evidence, misrepresents the evidence, and approve conclusions based on fabricated, unsupported defense's allegations, immaterial and offensive to the constitutional damages.

The State Supreme Judicial Court disregard facts pleaded and supported by the best evidence, crystal clearly established and persuaded prima faciae under parens patriae, where the State's delegated powers vested to private enterprise to perform established and essential public service of the health care, traditionally symbolizing the State's sovereignty. This action protects and shields the concerting group of the Defendants. [App. 13, 14]

The Court ignored the Defendant's Answer, announcing the established practice, applicable as a law, codified as law, having the mandated judicial supervision to control and to preclude the injured plaintiff to vindicate the wrongs actionable under 42 USC §1983 and §1985(3), pursuant to 28 USCA §1343 (3). [App. 4, 11, 12, 13

The State Supreme Judicial Court ignored the Defendants' manipulation of jurisdiction [App. 4,5]for its own purpose as being stated as charitable status, precludes the recovery of constitutional damages the both Plaintiffs had sustained.

The Court absolutely crystal clearly denied to the Freeman's family the guaranty of equal protection of the laws in violation of constitutional guarantee of just and equal laws, and therefore, upheld the invidious discrimination against Slavic ethnicity and Russian national origin of irreparably injured plaintiff. [App. 3, 11, 14, 15]. The Supreme Judicial Court denied to the Freeman's party resolution of the controversy under the authorization of State intent-based laws. The liberties nullified by the set of such laws disregard the rights protected by the Bill of Rights, because State's laws preclude to exercise the constitutional rights. The State Court ignored the textual agreement of 28 USC §1343(3) testifies that the federal law creates a cause of action jurisdiction "of any civil action" because the district court shall have original jurisdiction to redress the deprivations under color of any state law overrided by 28 USC § 1343 (3), pursuant to 42 USC § 1983.

The State Supreme Judicial Court ignored the Defendants nefarious scheme to shield violations repugnant and offensive to the Constitution under status "non-profit" and charitable institution, stated as a defense in the State Court.. The decisions was based upon misleading information,

presenting the conspiratorial acts and experimental manipulation as an malpractice and negligence.[App. 5,6] As a result of providing misleading information to the Court and making of knowingly erroneous arguments the Defendants escaped a judgment.

The Court ignored that even the demanded malpractice tribunal by the Defendant is the explicit and established practice of a State law under the mandated judicial supervision to preclude the vindication of the committed wrongs. [App. 6]

The State Court disregarded the evidence of coercive and fraudulent inducement that Sandra Freeman became subjected to noncosented experimental manipulation, other then therapeutic. The Court disregarded the best evidence of the fraudulent misrepresentation to conceal conspiracy and the alteration of the medical record done in the course of conspiracy with the personal knowledge and with intent to inflict bodily damages .[App. 7, 10, 11] The Court disregard the best evidence in the altered medical record absolutely clearly demonstrating the nonexistence of Dr. Halvorson and absence of the entry in the medical records of a regularly conducted activity, under Federal Rules of Evidence 803 (7) and 404, defined as routine practice of organization under Rule 801 (d) (2) (E) emphasized by the plaintiff as the evidence .The name of Dr. Halvorson absolutely clearly concealed in the Discharge Statement and in the Surgeons Note as the First Assistant in the Medical Chart.[App.6,7] This material evidence relevant to the original document, produced and signed by the original perpetrator of conspiracy in the course and furtherance of the conspiracy with the intent to conceal conspiratorial scheme. The Court ignored Dr. Lenard R. Simon letter introduced under Rule 1001 (3) with support of 801 (d) (2) (A), as well as three letters introduced from the same medical record demonstrated the tandem scheme by three

physicians with intent and directly conspiring against Sandra Freeman [App. 1].

The Court disregarded the evidence that the Honorable Justice in the State's District Court Allen Van Gestel issued the Memorandum on the basis of illegal judicial misconduct in the Federal Court that is nullifies the existent for Memorandum [App 2, 15, 16] The Rule 404 specifically authorize the admission of evidence of other crimes, wrongs, or acts as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The Court failed to recognize, that the plaintiff's vital, fundamental rights has been treated in the way offensive to the First and Fourteenth Amendments by arbitrary and capricious judicial determination. The judicial conduct in the lower Court comprises the systematic conspiratorial abuse of plaintiff by the Defendant and the Court personal, precluding the plaintiffs from the recovery for the constitutional damages, and for pain and suffering, mental anguish and embarrassment.

The Court upheld Defendant's deliberate fabrication, misrepresentation and fraud, intended to mislead plaintiff and to obstruct Justice [App. 1,2,12] The Court explicitly disregard the fact of Defendant's conspiracy with the Court's clerks, who delayed the deposition of the check # 144, dated on November 5, 1992. The check was paid by certified article # P238234190 to the civil action Clerk in the sum of $100.00, bond for docket #92-2947-A. Some one in the Clerk's office delayed the deposition of the check up to December 3, 1992. This conspiracy with the Court's member was the ground to the Motion to Dismiss and for Entry of Separate and Final Judgment, where the Defendant state:

"...The Plaintiff having failed to file required bond

within thirty days of entry of tribunal finding, the action must be dismissed pursuant to state statute. The Defendants further state that there being no just reason for delay. Separate and Final judgment should be entered in favor of the Defendant and against the Plaintiff pursuant to Rule 54(b)"
Defendants by their Attorney, s/s Ann L. Simoneau
Ann L. Simoneau, BBO #555495
J. Dunn Jr., BBO #138020, Dunn and Rogers,
20 Beacon Street, Boston, MA 02108, 617-523-2950
Dated : Dec. 11, 1992"

The Court disregarded the best evidence, material to the nature of the intentional deprivations done by the IRB assesing nursing team, planing the injury in-fact under parens patriae and by Dr. Botta, MD in the course of preoperative assessment, acceptable under Rule 404. [App. 4,5,12] Dr. Botta concealed the planned castration and the nature of proposed surgery, making deliberate mistake, concealing and misrepresenting the risk and danger of proposed experimental manipulations. Dr. Botta called the unwanted "Bilateral Salpingooforectomy" as Bilateral Hernia Repair." Executed Nursing Assessment as the conspiracy with intention to deprive plaintiff of the clearly established constitutional rights to be free from pain and suffering define this act as coercive, and without "good faith". But the Court disregard this fact of deprivations done with explicit knowledge and intent to submit plaintiff to the servitude. [App. 3, 12, 13] The State's Court deprived the plaintiffs the opportunity to vindicate the vital, fundamental rights, and instead uphold the Defendants misconduct so extreme that it could be characterized as utterly intolerable in a civilized society[App. 3.4]

The Court disregard the plaintiff's pleading with the personal knowledge with the support of Affidavit, where the

plaintiff was twice disrobed without any permission or consent to do so by an Afro-American female, at the morning time and exposed to the students. The plaintiff, Sandra Freeman, bleeding, under the fear of the eminent death, heavily infected female was absolutely helpless and desperate at the time of malicious deprivations done by the Beth Israel Hospital agents and servants. [App. 3,5]

The State's Court disregard the best evidence, promulgated by its own State' law. Under authorization of these laws Sandra Freeman became subjected to the unwanted, concealed. premeditated experimental manipulation, done by unconsented and unknown to her Dr. Halvorson and others servants and agents of Beth Israel Hospital. [App. 3, 7, 13, 14,15]

The Court disregarded the pleaded conspiracy and concealed procedure, and therefore, the deprivation of vital, fundamental liberty and rights to bodily integrity, personhood, self determination and the interest to be free from pain and suffering. The Court ignored the best, specific and direct evidence of the damages, pleaded with the personal knowledge, supported and persuaded, as it follows:

1] the evidence that Sandra do not authorized to experimental procedure any person [App. 7];

2] the evidence that the name of the first Assistant was concealed in the course of false description in altered Surgeons Note [App.7];

3] the evidence that the altered Discharge Statement concealed the name of unconsented Dr. Halvorson

4] the evidence of the signatures of two doctors not involved into research, but authorizing third one to manipulate over the plaintiff's body [App. 4, 5, 11];

5] the evidence that the Note done by the Anesthesiology team registered the Dr. Halvorson operating

Sandra Freeman. As to the contrary, Dr. Simon, MD, concealed this fact in the Discharge Note and in Surgery Notes with the personal knowledge. This evidence admissible under the specific authorization of Rule 404 of the Federal Rules of Evidence; [App. 4, 5, 11]

6] the evidence of Sandra Freeman premature discharge from Beth Israel Hospital with bleeding, diarrhea and high fever;

7] the evidence of the fraudulent and conspiratorial intent to conceal the fact of the intentionally inflicted damages, that was introduced specifically by the plaintiff as a set of three letters to be admissible under Rule 404 [App 4,5, 11]

8] the evidence that the damages pleaded in details by specifically, absolutely crystal clearly established of unrebutted prima faciae supported by the official medical records violate the XIV Amendments incorporation of specific guarantees of the Bill of Rights [App. 4,5].

9] that the specifically established and listed State's laws are the elements of the State's authorization to coerce inflicted damages as the traditional paternalistic function, delegated to the private enterprise in support of parens patriae, and therefore, are the vivid colors of State law [App. 2, 14].

10] that the irreparable damages sustained by the plaintiff to the vital, unseparable, concrete, palpable, fundamental, personal rights constitutionally established and federally protected at the time of committed wrongs in violation of the plaintiff's freedoms to bodily integrity, personhood, self determination and the right to be free from the pain and suffering could not be overridden by the State's created immunities [App. 2].

The Court disregard the evidence presented to Justice that the needless cruel punishment by private perpetrators

creates the protracted torture of the helpless and dependent plaintiff by the medical professionals. [App. 2, 3, 11] These traditional and essential State's powers to deliver health care service is stated by the Massachusetts General Law Annotated Chapter 111 Section 5. [App. 7, 14, 15] This absolutely crystal clearly established mistreatment is the conditions of a conspiratorial intent between the Defendants and State of Massachusetts congruent with Supreme Court opinion in *Missouri v. Illinois*, (1901) and warrants application of 28 U.S.C. Section 2403 (b)

The Court disregard the evidence that the oppressive authorization by the "State Law colors" in violation of Article III and United States Constitution, grant Defendants unlimited power to deprive this plaintiff under the listed State's laws was enumerated specifically and in detailes in this individual unresolved blood-and-flesh controversy under parens patriae [App 14, 15]

CONCLUSION

For the forgoing reasons, Sandra and Eugene Freeman most respectfully request this Honorable Court to grant their petition for a Writ of Certiorari to the Supreme Judicial Court for the Commonwealth of Massachusetts under the terms of 28 U.S.C. 2403 (b)

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COMMONWEALTH OF MASSACHUSETTS

SUPREME

JUDICIAL COURT

SANDRA FREEMAN and EUGENE FREEMAN
Plaintiffs - Appellee

vs.

DR. LENARD SIMON, MD and BETH ISRAEL HOSPITAL CORPORATION
Defendant - Appellant

APPLICATION OF THE PLAINTIFF-APPELLEE

FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

RE: AC - 97 - P- 2165

Plaintiffs pro se Sandra and Eugene Freeman
12Saint James Street
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REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

Pursuant to rule 27.1 of the Massachusetts Rules of Appellate Procedure, the Plaintiffs Sandra and Eugene Freeman [the Plaintiff] hereby request a leave to obtain further appellate review in the decision of the Appeals Court in matter, dated January 5, 1999. In support of this request, the Plaintiffs state that they litigate unresolved substantial controversy of the constitutionally established and federally protected personal rights, disregarded coersly, with malice by Dr. Lenard Simon, MD., and BETH ISRAEL HOSPITAL [the Defendant] under State's proprietary own laws uphelding its own group of citizens of deprive underprivileged minority,which warrant further appellate review by the Highest Court of the Commonwealth.

STATEMENT OF PRIOR PROCEEDINGS

This uresolved controversy arises out of an appeal of the Plaintiff, Sandra and Eugene Freeman, taken under 42 Chapter U.S.C. Section 1983 and 1985 (3) pursuant to Chapter 28 USCA Section 1343 (3). The irreparable injury in-fact was sustained by the plaintiff to their personal, fundamental, constitutionally established and federally protected rights under First and Fourteenth Amendments give to this controversy standing under the Article III of Constitution. All previous attempts to litigate civil rights action in the court of law were blatantly terminated by the judicial force, applying a tediously tailored scheme of procedural obstacles irrelevant and immaterial to the constitutional damages. The cross motion being decided as opposition to Defendants summary judgment was not delivered to the plaintiff, being stored in the Court records. The plaintiff's Motion on Rule 59 to grant new trial due to a unfair influence was timely filed, but unjustly striked out of docket. In the course of preclusion Judge Van Gestel issued Order dated August 29 1997. Judge Van Gestel illustrates as the basis to issue his Order, the episode of terminated litigation in the Federal Court.

The action in Federal system could not be taken at all in account as the act of Justice, due to the Chief Justice misconduct, illegal under 28 U.S.C.A. §455 (a). The First Circuit Chief Justice being a professor of Harvard Law School at the same presides over the plaintiff's case and has an interest and relationship with other members of Harvard University. Beth Israel Hospital Corporation is the Teaching Hospital of the Harvard Medical School as well.

STATEMENT OF FACTS

The decision of the Appeals Court is irrelevant and immaterial to the plaintiff's sustained egregious constitutional deprivations. This decision upheld the conspiracy against the Plaintiffs substantive, clearly established at the time of violation rights, and the irreparable palpable damages done by the Defendants under the State laws authorization to the plaintiff's rights, as it follows:

1] the right to be free from pain and bodily injury, within the interest and Liberty of bodily integrity;

2] the right to exercise the individual privacy of Sandra Freeman body;

3] the right to exercise the physical freedom and the self determination within the liberties established by the substantive Due Process Clause;

4] the right to not become subjected to the Servitude as a research object to experimental procedure without an informed consent;

5] the right to exercise a personal choice in matters of marriage and family life as Liberty.

The Appeals Court ignored the material unrebutted evidence in support of absolutely clearly established invidious discrimination and national origin based deprivations, mandatory redressible under the 42 U.S.C. §1983 and §1985 (3) pursuant to 28 U.S.C.A. §1343(3). The Appeals Court upheld the Defendant's affirmative immunity by the State's law, conflicting with the Article III and Article VI of the United States Constitution as the legal superiority over any conflicting provision of a State Law.

MATTERS WITH RESPECT TO WHICH FURTHER APPELLATE REVIEW IS SOUGHT

Freeman's family seeks further appellate review on the following issue of law:

1. Whether the Appeals Court decision precludes the plaintiffs from determination of the substantial constitutionally established and federally protected fundamental personal rights in this controversy, expressed as the Defendant's malicious disregard of the plaintiff's First, Thirteenth and Fourteenth Amendments rights under the State's Laws authorization to inflict injuries in-fact, actionable under the Chapters 42 U.S.C. §1983 and §1985(3) pursuant to Chapter 28 U.S.C.A. §1343 (3).

WHY FURTHER APPELLATE REVIEW IS WARRANTED

Further appellate review is warranted in this unresolved controversy between mutilated family and the Defendant acting under a set forth State's Law, because the rulings of the motion judge and the Appeals Court, if allowed to stand, absolutely denies to plaintiff's their fundamental, personal rights of interfamilial privacy, further making it possible to reinflict same damages to plaintiff's family again, and again on the basis of the existent State's authorization. The Appels Court ignored the plaintiff's Slavic national origin and nationality, subjected to oppressive Judeo-Christian Defendant's militancy, repugnant towards a constitutionally established and federally protected personal privacy. Specifically, the decision of the Appeals Court contradicts the prior rulings of this Court with respect to:

(1) substantive protections of due process clause limit what a State may do regardless of what procedures are followed, (cited as Miga v. *City of Holyoke*, 497 N.E.2d 1,n.3 (1986);

(2) the inability of this plaintiff to review or to override the adverse to plaintiff judicial support to Defendant's party contradicts the previous Court statement regarding the fundamental right of privacy *(Schloendorff v.* Society of *N.Y. Hosp*, 211 N.Y. 125, 129 (1914) in *Guardianship of* Roe, 421

N.E. 2d 40,51 (1981) by Hennessey, Chief Justice) congruent with malice standards in *(Okin v. Rogers,* 478 F.Supp. 1342, 6.34, 650 (1 Cir. 1980) actionable under §1983 due to constitutional roots;

(3) the full litigation of a constitutional controversy under §1983 for violation of specific First and Fourteenth Amendment rights of interest in being free from nonconsensual invasion of person's bodily integrity denied by the state procedural law contradicts previous Court's citing in *Moe v. Secretary of Administration* (417 N.E. 2d 399)

ARGUMENT

The Appeals Court improperly upheld the District Court's absolutely erroneous dismissal of substantive constitutional rights controversy where §1983 plaintiff pleaded a specific evidence with the personal knowledge as to malicious Defendant's misconduct in violation of fundamental and personal rights of intrafamilial privacy and freedom to be free from pain and suffering.

The Appeals Court decision improperly treated the plaintiff's controversy under the State's procedural standards. The Court could not prevent the discovery of disruptive evidence for the purpose of an official immunity doctrine. The **state of mind** component was absolutely clearly established, specifically pleaded and supported by unrebutted Best Evidence, material and direct to the malicious disregard of the plaintiff's rights by the group of Defendants. This malicious disregard justifies the non-existence of objective test that prevails in qualified immunity as a general matter. The Supreme Court has noted that the use of heightened pleading standards in civil rights action is "a departure from the usual pleading requirements of Federal Rules of Civil Procedure 8 and 9(b) and from standard for Summary Judgment under Rule 56" (*Siegert v. Gille* , 111 S.Ct. 1789, 1795 (1991)(Kennedy, J., concurring). For the purpose to state the claim upon which the damages may be recovered in this controversy the plaintiff supported all allegations by an Affidavits and by the evidence of the alteration

and concealment of Dr. Halvrson,MD. The plaintiff specifically and absolutely clearly established the nature of intentional damages done to the plaintiff, and absolutely clearly demonstrated by the medical record that it was done with the personal knowledge, in the furtherance of conspiracy, within the daily routine and within the prescribed duty to make such record, which is absolutely clear for the reasonably minded juror that the plaintiff, Sandra Freeman sustained the type of irreparable damages that shock the conscience of any member of a civilized society. In order to satisfy the burden of production and prima faciae, **the plaintiff specifically, and with the personal knowledge pleade all alleged events of premeditated, intentional deprivations with the support of material, concrete evidence, done as the business record, bearing the signatures of wrongdoers**. The Appeals Court dismissal of the plaintiff's solid controversy contradicts with this Honorable Court statement that "[a] person has a strong interest in being free from nonconsensual invasion of his bodily integrity, and a constitutional right of privacy that may be asserted to prevent unwanted infringements of bodily integrity."(*Matter of Spring*, Mass. 405 N.E.2d 115, cited in *Moe* v. *Secretarry of Administration, 417* N.E.2d. 399) This Court relied upon the seminal cases: *Skinner v. Oklahoma,* 316 U.S. 535 (1942); and *Griswold v. Connecticut, 381* U.S. 479, 485 (1965), where this Supreme Judicial Court explicitly upholds and expresses its own position:

> "**We have, in the past, consistently respected the right of a person to be free from nonconsensual invasion of bodily integrity**." (*Matter of Moe*, cite as Mass., 432 N.E.2d 712, 719 [8-10])

As to the contrary, the State's law regulates the concealed and unconsented castration of Sandra Freeman, and therefore, authorize the Defendant to invade the bodily integrity of the plaintiff, and to preclude illegally castrated Sandra Freeman to litigate the controversy. And this again contradicts Court's own citation:

> 1] "**The constitutional right of privacy.... is an expression of the sanctity of individual free choice**

and self determination as fundamental constituents of life" (Matter of *Moe*, 432 N.E. 2d 719)

2) "**this right of human dignity extends to all individuals.**" (1b)

The plaintiff's pro se stipulation with prejudice was provoked by the **unjust Defendants influence in the § 1983 and §1985(3) controversy**. But the District Court Justice Honorable Alan van Gestel terminated mandatory Motion on Rule 59 (e). Appellate Court ignored the rights of the plaintiff to full litigation of §1983, in contradiction with "the existence of the jurisdiction of which creates an implication of duty to exercise it", (the Supreme Court in *Howlett v. Rose*, 110 S.Ct. 2430 (1990) quoting *Mondou v. New York, N.H. & H.R.R.*, 223 U.S. 1 (1912). *The* liability to be superimposed upon the Defendants' party upheld by Supreme Court opinion, when Defendants' as **a private party**, holding no office requiring them to exercise discretion, or to be principally concerned of public goods and therefore to not exercise any qualified immunity, as a safeguard of government. *(Wyatt v. Cole*, 112 S. Ct. at 1833 (1992)

The Appellate Court ignored the plaintiff's Article III damages and the Supremacy Clause, which oblige the State Court inherent authority "**to adjudicate claims arising under the laws of United States**" (RICO action in *Taffin v. Levitt*, 110 S.Ct. 792,795, (1990), Sandra O'Connorr, J., for unanimous Court)

2.) **The Appeals Court improperly concluded that the plaintiff failed to demonstrate error in procedural obstacles applied to the fundamental personal civil right absolutely clearly established at the time of malicious disregard of the plaintiff's rights under §1983**.

As the party of explicit controversy in this litigation, the plaintiff relied upon this Highest Court of Commonwealth citing the previous seminal cases, depicting the frames of constitutional rights. But the Appellate Court demonstrated vague and arbitrary position in this controversy, protecting the Defendant

from the punitive damages for the malicious and intentional disregard of plaintiff's constitutionally established and federally protected personal rights. In *Howlett v. Rose*, 110 S.Ct. 2446 the Supreme Court make it clear that the traditional authority States have to establish jurisdictional rules cannot be a basis for refusing to entertain federal causes of action. But the Appellate Court simply ignored the consistence of a concurrent jurisdiction with the purpose of §1983 identified in *Monroe v. Pape*, 365 U.S. 167 (1961) by the Supreme Court as
(1) overriding certain kinds of state law;
(2) providing a remedy when the remedy was inadequate; and
(3) providing a federal remedy when the state remedy, though adequate in theory, was not available in practice. In *Miga v. City of Holyoke*, (497 N.E.2d 1, 7 (Mass. 1986) this Court conclude that the claims under §1983 are not bared where the plaintiff alleged and established the violation of substantive constitutional right. The District Court Judge Order and all subsequent procedural support, summary judgment are immaterial, and irrelevant to the plaintiffs damages. The existent laws in the Commonwealth of Massachusetts are repugnant to the human dignity of a civilian plaintiff who voluntarily migrated to this hemisphere, where direct impact with Defendants resulted as a peonage and slavery under an immutable inferior class membership. The plaintiff was discriminated aqainst by the offensive religious superiority custom and practice to inflict the pain, suffering and mental distress under the listed State's Laws, as it follows from the M.G.L.A.:
1) **Chapter 111, Section 203 (d);**
2) **Chapter 111, Section 204 (d);**
3) **Chapter 111, Section 205(b)clause 34-40;**
4) **Chapter 176B:7;**
5) **Chapter 176B:14;**
6) **Chapter 176B:20 (f)**

The decision of the Court of Appeals contradicts to this Honorable Court upheld of *Monroe v. Pape*, 365 U.S. 167, (1961) standards in *Miga*. The Court of Appeals ignored that the concealment of experimental none-therapeutic manipulation done by unknown to the plaintiff Dr. Halvorson, MD.,

conspiring with the Defendants against fundamental Substantive Due Process Clause, gave the plaintiff the standing to challenge the state law. The plaintiff asks this Honorable Court to not de~part from the Court's own standards and to not impair the privileges and immunities these plaintiffs, the citizens of United States, as to deny to them equal protection of the constitutional law.

CONCLUSION

For all the reasons stated, the plaintiff respectfully urges this Court to grant this petition for Further Appellate Review.

Plaintiff pro se Sandra Freeman
Plaintiff pro se Eugene Freeman
Date:

12 Saint James Street
Newton MA 02458-1753
617-965-1521

IN THE APPEALS COURT
CLERKS OFFICE
1500 NEW COURT HOUSE
BOSTON MA 02108

SANDRA FREEMAN
EUGENE FREEMAN
PLAINTIFF
V.
DR. LENARD R. SIMON, MD and
BETH ISRARL HOSPITAL CORPORATION
DEFENDANT
Re: NO. A-C-97P-2165

PETITI.ON FOR REHEARING

The Petition for rehearing of the deprivation of the constitutionally established rights, privileges and immunities by a group of private persons violated Plaintiff's rights under the State laws timely filed by Plaintiff Sandra and Eugene Freeman.

Sandra Freeman, a Russian born, Russian speaking female of Slavic origin litigate action under Chapters 42 U.S.C. § 1983 and §1985 (3) pursuant to 28 U.S.C. §1343 (3) vindicate the damages to First and Fourteenth Amendments in State Court. The Commonwealth of Massachusetts Court of general jurisdiction possess subject matter jurisdiction to decide intentional deprivations done to fundamental, constitutionally established and federally protected rights under the First, Thirteenth and Fourteenth Amendments by the group of Defendants, namely Dr. Lenard R. Simon, MD and Beth Israel Hospital Corporation [Defendant]. The Plaintiff state a claim upon which the requested remedy must be granted as to the fact that the Defendant's party is the real and direct party of Plaintiff's interest to vindicate disregarded rights and to recover

in outcome the exact and unchanged sum, remedial to a mutilated family. There are no beggers, but full time agrieved citizens demand Justice.

The group of Defendants acted by the scheme of tandem(Exh.32-36) construed of the multiple overt acts with a plan and meeting of their minds to deprive the Plaintiff, the citizen of the United States of rights inhering in Federal citizenship. During overt acts done in furtherance of conspiracy to the fundamental constitutional rights, that shock the conscience of any reasonable person of civilized society, Sandra Freeman was injured in-fact. (Exhibits 1-32)

The Plaintiff presents absolutely clear and convincing evidence to reasonably minded juror as to the fact finder will return the judgment in favor of the Plaintiff, providing a remedy against all forms of official violation of federally protected rights. (Exhibits 1-36)

The genuine issue of material fact for regarding whether the private enterprise was intentionally and with the personal knowledge deprived the Plaintiff of a substantial, fundamental, concrete, personal, constitutionally established and federally protected First and Fourteenth Amendments rights, freedoms and guarantee clearly established at the time of deprivation under the Massachusetts State law authorisation preclude summary judgment on Plaintiff's litigated § 1983 and §1985 (3) in the State Court.

GROUNDS AND REASONS TO OBTAIN THE RELIEF.

1} The intentional harm to the Plaintiff was done with the personal knowledge by the group of private medical professionals in the course of their routinely practiced duty delivering health care under the traditional State's soverign Powers and Duties of Department of Public Health.

2}The Defendants enterprise interfere with the fundamental constitutionally established at the time of deprivation rights, caused to the Plaintiff irrepairable damages including the damages to the sexual intrafamilial sphere. (Exhibits 1-36)

3} The State laws, offencive and repugnant to the First and Foutreenth Amendments encourage the Defendant to inflict a concrete, material and irrepairable damages to the Plaintiff fundamental rights including recognised and protected at the time of deprivations liberty interest in refusing unwanted procedure, other then therapeutic.

4} A desperate and helpless Plaintiff in full control of the Defendant, under the general anesthesia sustained the damages which have never been done to the wives of religious, business or political leaders entered into the treatment in Beth Israel Hospital from different doors. The Plaintiff, illegally castrated, bleeding, with diarrhea and high fever was simply dumped. (Exhibits 1-36) Only the Plaintiff Sandra Freeman was discriminated in this fashion. Other members of the community were protected from any harm due to their unquestioned origin.

5} To support Petition, the Plaintiff states that the material fact of the **medical record alteration, done with the intent to conceal the evidence** that Dr. Halvorson,MD, performed unconsented research manipulations and castration of a desperate and helpless Plaintiff Sandra Freeman express the invidious discrimination, servitute, conspiracy and violent disregard of all rights, separating Human from the beast. (Exhibits 1-36)

6} This fact of intentional concealment contributes in support of the Defendants' conspiratorial intent to preclude civil rights litigation in the Court of Law. As a direct impact of an unconsented castration and illegal concealed manipulation, the

Plaintiff, Sandra Freeman, sustained irreperaible damage to her concrete and material rights established under the Constitution and protected by the Federal Law at the time of deprivation, including mutilation of genital organs.(Exhibits 1-36)

7} The malicious damages to the Plaintiff's rights were sustaned while the group of Defendants routinely practiced research and training manipulations, other then therapeutic.

8} For the sole purpose to divert the Plaintiff's attention and to support the Defendants's enterprise to conceal constitutional deprivations, Harvard Medical School Institutions Risk Management approach the Plaintiff twice with a conspiratorial intent to assure a fraudulent medical mallpractice cause. This conspiratorial act committed with the purpose to conceal the Defendants's conspiracy and to preclude the litigation of the Plaintiff's fundamental constitutional rights in the Court of Law. (The evidence still under defendants's controle) (Exhibit 2-3)

9} The Defendants, namely Dr. Simon, Lenard R, MD and Beth Israel Hospital Corporation still require the qualified affirmative immunity, pleaded as the shield for liability for civil damages. The Defendants intentional deprivations, with the personal knowledge, premeditated and willful in its nature absolutely clearly violate the Plaintiff's constitutional rights clearly established at the time of deprivations of which a reasonable person would have known.

10} Dr. Simon, MD and the members of Beth Israel Hospital IRB have known that intentional conspiratorial disregard of clearly established at the time of deprivation constitutional rights would create inrreparable harm and devastation in the Plaintiff's Life. (Exhibits 1-36)

11} The unrebutted evidence of "Tandem action", where the joint of Defendants in the furtherance of conspiracy support

each other with the personal knowledge and with the meeting of the minds absolutely clearly infere from the presented the Court evidence: **A]** from the Nursing Assesment - the coersion to waive Plaintiff's constitutional rights and **B]** the tundem overt acts done in furtherance of conspiracy of examining and submitting Sandra Freeman to intolerable pain and suffering done by joint of wrongdoers:

1) Dr. Muzshbits, MD ; 2) Dr. Simon, MD; Dr. 3) Helfand, MD and 4) Dr. Botta, MD must not be ignored by the Court as a mistake, negligence, or other innocent reason.

(Exhibit 20-27, 32-36)

12} The Plaintiff states that the State posesses Tenth Amendment soverign power under Parens Patrie to protect its own citizens, and may not abstain capriciously, on its own desire from this constitutional duty. The existing relationship between the clearly indispensable, and essentialy important public function of health care delivery and the current laws, explicitly authorizing to inflict the material, palpable and irrepairable damage to the personal, established right of this individual Plaintiff presents the material evidence of denial equal protection of law to the clearly established at the time of deprivation Plaintiff's substancial rights. (Exhibit 1-36)

13} This evidence infere from the face of the Plaintiff's pledings in support to override heavily regulated health care delivery performed by the State and delegated to private enterprise in the Plaintiff's case. The Plaintiff's claim of §1983 in the State Court under the First and Fourteenth Amendments satisfies the burden to establish evidence sufficient to raise a genuine issue of fact as to whether sustained damages was done by the Defendants due to existent today regulation, custom, policies, laws, practice, legislative intent and judicial support inflict such damages over race-composed protected class. The

Plaintiff concentrates the attention of the Court upon the value of the fundamental disregarded by the Defendants's enterprise under the State laws authorization, as it follows:

1] the right to be free from pain and bodily injury, within the interest and Liberty of bodily integrity;

2] the right to exercise the individual privacy of Sandra Freeman body;

3] the right to exercise the physical freedom and the self determination within the liberties established by the substantive Due Process Clause;

4] the right to not become subjected to the Servitude as a research object to experimental procedure without an informed concent;

5] the right to exercise a personal choice in matters of marriage and family life as Liberty.

14} These rights were absolutely clearly violated by State's authorised deprivation, as it follows:

1] a conglomerate of State laws in the scheme created by the State legislature for the purpose of extancive usage

2] established with precise legislative intent

3] to mandate a challenged private action,

4] expressed as an essential public function to deliver a health care

5] in heavily regulated by the State health care industry

6] where the Defendant must comply with existent Massachusetts's laws, above stated by the Plaintiff and with the actual Code of Masssachsetts regulations,

7] where, the indispensable essentially important public function of health care assigned under **Parens patriae** to the State delegated to the private enterprise,

8] compelling the Public Health corporations and Hospitals as a providers to comply with its own by-laws and regulations

9] where, existent laws encourage and authorize the private enterprise to inflict the deprivations upon a Plaintiffs's with a personal knowledge because of such law,

10] where the Defendants' private enterprise immunized by the State's legislative and judicial assistance, support and privileges against liability for constitutional violations of the First and Fourteenth Amendments.

15} The Law authorizes, prescribes, legitimizes, and encourages the Defendants' malice by the State's expressed souvereignty. Instead of being a proper party to protect and to represent the Plaintiff, when their health and comfort are threatened, the State's judiciary just multyifolded the Plaintiff's deprivation and consciential suffering, and the fear of eminent **DEATH**. (Exhibits 28-29)

16} The nature and the origin of the deprivations to personal, fundamental, constitutionally established and federally protected rights at the time of deprivation, totally mutilating the Plaintiff's familial life gives the Plaintiff the standing to challenge unjust State law, pursuant to such mutilation.

17} The Plaintif lists the laws set forth to effectuate the deprivations done to the Plaintiffs fundamental civil rights by Institutional Review Board and other medical professionals under the Power and Duties of Department, as it follows from the M.G.L.A.:

1) Chapter **111**, Section **203** (d); II) Chapter **111**, Section **204** (d); III) Chapter **111**, Section **205** (b) clause 34-40

IV) Chapter **176B:7**; V) Chapter 176B:14; VI) Chapter **176B:20** (f).

18} All of the listed laws immunize the Defendants against the liability to be imposed pursuant to coersed, consealed and malicious expermentation without the informed consent, done with the a personal knowledge and intent to inflict the irrepairable harm. (Exhibit 1-36)

19} The Plaintiff's mental pain and suffering multyfolded and unjustly extended by their rights violation in the Court of Law: Honorable Justice Allan van Gestel of the Superior Court sited irrelevant, immaterial and impertinent to Plaintiff's mutilations event of Federal Justice misconduct in his Order dated on August 29, 1997.(Exhibit 37)

20} Based upon the absolutely clear, and convincing unrebutted evidence, direct and material to the Plaintiffs's constitutional rights deprivations that being submited to the reasonable fact finder jury returns the judgment in favor of the victimized Plaintiff, the Plaintiff in this individual action demands this Court to follow the standards of Chapters 42 §1983 and §1985(3) pursuant to abrogation of federally protected rights under the State of Massachusetts abovementioned laws.

Date: 19th Day of January of 1999
Sandra Freeman Plaintiff pro se

Eugene Freeman Plaintiff pro se

12 Saint James Street
Newton, MA 02458-1723
617-965-1521

Commonwealth of Massachusetts Appeals Court
97-P-2165
Sandra Freeman & another
vs.
Lenard R. Simon & another
MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The brief of the pro se plaintiffs and their record appendix unfortunately do not assist or inform us. The plaintiff have failed to demonstrate error in either denial of their motion to vacate judgment or in the Superior Court orders which entered on August 20 and 29, 1997. We affirm those orders.

Order denying motion
vacate judgment affirmed.
Orders entered on August 20 and
29, 1997, affirmed

Bythe Court (Kass, Dreben & Laurence, JJ.).

Clerk / Signed by Clerk/
Entered January 5, 1999
1/ Eugene Freeman
2/ Beth Israel Hospital

Supreme Judicial Court of Massachusetts
1412 Courthouse, Boston, Massachusetts 02108
(617) 557-1020

Eugene Freeman
12 Saint Jams Street
Newton, MA 02458
Re: Docket No. FAR-10361

SANDRA K. FREEMAN & another
vs.
LENARD R. SIMON, & another
NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that the above-captioned Application for Further Appellate review has been considered by the Court and is denied.

Jean M. Kennett, Clerk

Dated : February 22, 1999
To: Vincent P. Dunn, Esquire
Ann L. Simoneau, Esquire
Eugene Freeman

ARTICLE III SECTION 2

The judicial power shall extend to all Cases, in Law and Equity, arising under this constitution, the Laws of the United States, and treaties made, or which shall be made, under their Authority;-to al Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party;-to Controversies between two or more Sates;-between a State and Citizens of another State;-between Citizens of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

ARTICLE VI, SUPREMACY CLAUSE

...This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land;...but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

AMENDMENT I [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

AMENDMENT XIII [1865]

SECTION I. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have dully convicted, shall exist within United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI [1868]

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Civil rights and elective franchise, 28 U. S. C. A. Section 1343 (3)

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom and usage, of any right, privilege or immunity secured by the Constitution of the United States or any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

42 U.S.C. Section 1983 , Civil Action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, usage, of any State or territory or the district Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the district of Columbia.

42 U.S.C. Section 1985 (3), Conspiracy to interfere with civil rights

(3) Depriving persons of rights and privileges. If two or more persons in any State or territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or for the purpose of preventing or hindering the constituted authorities of any State or territory from giving or securing to all persons within such Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or thread, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States, or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Title 28, United States Code Section 2403, Intervention by United States or a State; constitutional question

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact the attorney general of the State, and shall permit the state to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be a subject to all liabilities of a party as to a cost to the extend necessary for a proper presentation of the facts and laws relating to the question of constitutionality.

Supreme Court, U.S.
FILED
JAN 21 1999
CLERK

(2)

No. 98-1783

In The

Supreme Court of the United States

SANDRA FREEMAN and EUGENE FREEMAN,

Petitioners,

v.

DR. SIMON LENARD, MD and
BETH ISRAEL HOSPITAL CORPORATION,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Judicial Court Of Massachusetts

BRIEF OPPOSING A MOTION TO DISMISS

SANDRA FREEMAN pro se
EUGENE FREEMAN pro se
12 Saint James Street
Newton, MA 02458
617-965-1521

1188

QUESTIONS PRESENTED

1. WHETHER THE MASSACHUSETTS STATE LAWS VIOLATE THE CONSTITUTIONALLY ESTABLISHED AND FEDERALLY PROTECTED INTRAFAMILIAL FUNDAMENTAL PRIVACY RIGHTS AND THEREFORE ARE REPUGNANT TO THE UNITED STATES CONSTITUTION.

2. WHETHER DISREGARD BY THE STATE COURT'S PETITIONER'S RIGHTS PRECLUDES THE DETERMINATION OF THE DAMAGES ACTIONABLE UNDER CHAPTER 28 U.S.C.A.1343 (3).

3. RESPONDENTS APPLIED THE WRONG STANDARDS THAT GUIDE THE COURT'S EXERCISE OF DISCRETION TO GRANT A PETITION FOR CERTIORARI.

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I. THE UNITED STATES SUPREME COURT HAS JURISDICTION.

28 U.S.C. Section 1257 states in pertinent part:

> (a) Final judgment or decree rendered by the highest Court in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the grounds of it being repugnant to the Constitution, treaties, or laws of the United States. . . .

This controversy involves the validity of state statutes on the ground of its being repugnant to the Constitution. The petitioners Sandra and Eugene Freeman assert that Massachusetts General Code Annotated Chapter 176 Section 7, Chapter 176 B section 14, Chapter 176 B Section 20(f) are repugnant to the Constitution as it was applied in this controversy, specifically as to inflict the irreparable damages to the violated of the First and Fourteenth Amendment rights, and equal protection clause as to the fundamental, concrete, individual, intrafamilial rights of privacy, constitutionally established and federally protected. [C-2, 3, 4, 5; App. 3, 4, 6]

The issue was raised by the petitioners in Federal Court as soon as they discovered the violent disregard of the constitutional rights. The petitioners lost in all instances. The petitioners did not litigate any issue of discovered deprivations in the State of Massachusetts Suffolk Court prior to federal litigation. They commenced the Section 1983 and 1985(3) pursuant to 28 U.S.C.A. 1343(3) litigation in the United States District Court. They

voluntarily stipulate the case by Motion to Dismiss on about March 1993. The claim's dismissal and all subsequent mistrial in the Federal Court of the First Circuit are without the effect due to judicial misconduct under 28 U.S.C.A. Section 455(a). The Writ of Certiorari was dismissed. On May 23, 1997 the petitioners filed the Motion on Rule 60(b)(4), alleging by the Affidavits the facts referred specifically to the federal question cause of action in the State's Court. The Motion on Rule 60 despite on Motion demanding jury trial was dismissed, including stricken mandatory Motion on Rule 59.

In a request by the State Court Petition for Rehearing to the appellate court the petitioners raised the issue of the irreparable damages under the set of Massachusetts laws. The Petition was denied. [*App. 17*]

Petitioners then brought a Petition for Review in the Massachusetts Supreme Judicial Court. Petitioners raised the issue of constitutional deprivations under the State's laws authorization in violation of the federal laws. The review was denied by the Supreme Judicial Court. [*App. 18*]

In order to invoke and to establish the jurisdiction of the Supreme Court the petitioners argue that the jurisdiction does not depend on whether or not the state court addressed the federal question. It is enough that the federal claim was made and not accepted. (*Lynk v. La Porte Superior Court No. 2*, 789 F.2d 554 (7th Cir. 1986).) When the Massachusetts Supreme Court denies a Petition for Review, it is to be assumed that the court has been given fair opportunity to review the merits of the petitioners' claim, for purposes of exhaustion of state court

remedies. (*Roman v. Estelle*, 917 F.2d 1505 (9th. Cir. 1990).) The issue has been raised, preserved, and passed upon by Massachusetts Supreme Judicial Court.

The respondent's claim that the petition must be denied is absolutely erroneous. This court has jurisdiction under 28 U.S.C. Section 1257 because petitioners exhausted the state court remedies on the issues raised by this petition.

II. WHETHER DISREGARD BY THE STATE COURT'S THE PETITIONER'S RIGHTS PRECLUDES THE DETERMINATION OF THE DAMAGES ACTIONABLE UNDER CHAPTER 28 U.S.C.A. 1343(3).

In order to prevent denial without the opposition, the petitioners explicitly object and oppose any and all Respondent's affirmative defenses and, specifically, the Motion to Deny.

The Respondent ignores the set forth rules of the Federal Civil Procedure, which require the pro se litigant to sign up the paper only on behalf of her/himself in order to be legally bound to the effect of Dismissal, where the party presents itself.

Res judicata and collateral estoppel without its preclusive effect to litigate "Issue" and "Claim" when the Federal District Court for District of Massachusetts dismissed original pro se complaint for failure to state a claim upon which relief could be granted. Our federal question claim was dismissed upon internally inconsistent defenses on Rule 12(b)(1) and (b)(6) in the Federal Court with subsequent judicial abuse, denied us full and fair opportunity to be heard. This Court should agree that

facts underlying two pleaded actions were substantially different: the Federal Court action involves a single discrete issue of the sustained constitutional damages under the set of interim regulations and state policies. In our individual controversy the interlocutory order denying Freeman's party litigation was neither a final judgment nor an essential precursor to what was in fact the final judgment. Because the Respondents prevailed on Rule 12(b)(1) it was beyond the power of the Court to decide whether the complaint was sufficient to state a cause of action under Rule 12(b)(6).

Where the current unresolved controversy in the State Court involves a course of conduct, based upon the documented evidence and unrebutted proof of intent to inflict the damages, pleaded by the Affidavits, supported by the evidence establishing the state of mind in regard of the traditional State's monopoly within the State sovereign delegated power to the private actors to perform traditional, essential health care service under Parens Patriae.

The Respondents' mutual derivative interests, relationship and connection as "privity" claimed by petitioners in the Federal Court does not include the "tandem" action pleaded with particularity in the current State litigation, enforceable under 28 U.S.C.A. 1343(3). Because the State's Court claims are absolutely clearly separate, independent and distinct from the Federal interim regulations claims, and Congress without the power to preclude the litigation the personal rights of privacy in the State's Court, they should not be considered as an "Identical claims". [C-6; App.-1, 2, 4, 5, 6, 12]

Specifically, the doctrine of collateral estoppel may not be invoked where the irreparable damages to our family was induced by the fraudulent and conspiratorial conduct of the Respondents' party, that we still suffer daily, and by the Respondents' fraud and misrepresentations in both Courts.

The petitioners had the opportunity to litigate federal cause of action accrued only since they discovered violent deprivations and had the reason to know that they sustained constitutional damages. *Gleason v. United States*, 458 F.2d 171 (2d Cir. 1972).

III. RESPONDENTS APPLIED THE WRONG STANDARDS THAT GUIDE THE COURT'S EXERCISE OF DISCRETION TO GRANT A PETITION FOR CERTIORARI.

Supreme Court Rule 10 describes the standards that guide the Court's exercise of discretion to grant a petition for certiorari. Respondents' Motion to Dismiss urges the Court to deny Sandra and Eugene Freeman's petition for certiorari, because, in Respondents' judgment, the petitioners failed to satisfy Rule 14 standards; because petitioners filed "Identical claims"; and because the district court ignored the mandatory procedural rules governing the Voluntary Dismissal to be signed by all members of the pro se party. However, whether a Massachusetts Supreme Judicial Court correctly decided a question is not a Rule 10 standard that guides the Court's exercise of discretion. Rather, with respect to the Court's decision to grant or deny petitioners Sandra and Eugene Freeman's petition, the guiding standards are whether the questions

the Massachusetts Supreme Judicial Court expressly disregarded without any decision the guarantee of equal protection of the law in a controversy involving purposeful ethnic discrimination are of paramount constitutionally established importance that they should be decided by this Court, and whether the disregard of constitutionally established and federally protected rights to be free from the pain and suffering under the State law's authorization conflicts with the Constitution and with relevant decisions of this Court. *See* SUPREME COURT RULE 10(c).

Sandra and Eugene Freeman petition for certiorari presents questions of the fundamental individual privacy rights under the First and Fourteenth Amendments, all questions of constitutional importance, which satisfy the Rule 10.

CONCLUSION

For the foregoing reasons and those in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

SANDRA FREEMAN pro se
EUGENE FREEMAN pro se
12 Saint James Street
Newton, MA 02458
617-965-1521

APPENDIX

Massachusetts General Law Annotated the Chapter 176 B Section 7,

"No restrictions shall be placed by any such corporation upon its participating physicians, chiropractors, or nurse midwives as to methods of diagnosis or treatment." A1

Massachusetts General Law Annotated the Chapter 176 B Section 14, Medical Service Corporation.

Liability of corporation; exemption from insurance laws, tax exemption "Section 14.

Every medical service corporation is hereby declared to be charitable corporation. (No such corporation shall be liable for injuries resulted from negligence or malpractice on the part of any participating physician, participating chiropractor any other part of participating provider of health service under the laws of the commonwealth to which the subscriber or covered dependent maybe entitled under the provision of any workmen's compensation. Very such corporation shall be exempt from all provisions of the insurance laws of the commonwealth, except as otherwise provided in this chapter. The property of every such corporation shall, except as hereinafter provided be excempt from all state and local taxes." A2

Massachusetts General Law Annotated the Chapter 176 B Section 20, MEDICAL SERVICE CORPORATIONS

(f) that nothing contained herein shall prohibit a medical service corporation from disclosing patient information to an account which is self insured in whole or in part, and administered by such corporation for research to be conducted by the account; provided, however, that no patient shall be subject of such research without having first been notified by the account in writing of the scope and purpose of the research. Such written notice shall clearly state that the patient will not be a participant in any such research and will not be penalized in any way if the patient elects in writing to be excluded. Any research conducted by an account under this clause maintain the confidentiality of all identifiable patient information A3